HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.993 of 2006

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Between:

C.V.Charya

……Appellant

And

The Chairman, A.P State Financial Corporation, Chirag Ali Lane, Abids Hyderabad and three others

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri Sharad Sanghi

Counsel for Respondent Nos.1 and 2 : Shri T.Durga Reddy

October 09, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 20-09-2006 passed by the learned Single Judge in Writ Petition No.17212 of 2006, whereby he refused to entertain the appellant's challenge to the action taken by the Andhra Pradesh State Financial Corporation (for short' 'the Corporation') to auction his house which had been mortgaged for securing repayment of the loan of Rs.25,00,000/- given to one Dr. K.Ramya.

A perusal of the record shows that in the year 2003, the Corporation sanctioned working capital term loan of Rs.25,00,000/- to Dr. K.Ramya for the purpose of construction of nursing home and purchase of medical equipments. The appellant along with two others namely, G.Srinivas and N.Purnachander Rao gave collateral security for repayment of the loan. Due to the failure of Dr.K.Ramya to pay the instalments of loan, the Corporation initiated action under Section 29 of the State Financial Corporations Act, 1951 (for short, 'the Act') and notice dated 18-3-2006 for auction of the house property mortgaged by the appellant was issued. The latter submitted representation dated 21-3-2006 to the Chairman of the Corporation with the request that his house may not be auctioned, but could not persuade the concerned authorities of the Corporation to withdraw the auction notice. The house of the appellant was auctioned in the last week of March, 2006. Immediately thereafter, notice dated 26-4-2006 was served on the appellant to vacate the house property bearing No.3-9-61, Sharada Nagar, Ramanthapur, Hyderabad.

The appellant challenged the eviction notice in Writ Petition No.17212 of 2006 by contending that the action taken by the Corporation is contrary to the principles of natural justice and violative

of his fundamental right guaranteed under Articles 14, 19 and 21 of the Constitution of India. He pleaded that the Corporation had targeted him without taking appropriate action against the borrower and other guarantors.

The learned Single Judge dismissed the writ petition by observing that the Corporation was at liberty to proceed against the property given in collateral security and the impugned action cannot be invalidated simply because similar action has not been taken against the borrower.

Learned counsel for the appellant argued that the provision of Section 29 of the Act is not available to the Corporation to auction the mortgaged property belonging to his client and the only course available for realization of the outstanding dues was to auction the assets mortgaged by the borrower. He further argued that before auctioning the appellant's property, the Corporation authorities did not give him reasonable opportunity to show cause and to make arrangements for repayment of the loan.

In the context of the aforementioned submissions of the learned counsel, we pointed out to him that no such plea has been taken in the writ petition and a new plea, the determination of which requires investigation into the issues of fact, cannot be allowed to be raised in the appeal. Upon this, learned counsel made a request that his client may be permitted to withdraw the appeal along with Writ Petition No.17212 of 2006 with liberty to file fresh petition for questioning the action initiated by the Corporation under Section 29 of the Act.

Learned counsel appearing for the Corporation strongly opposed the request made by the learned counsel by arguing that the appellant should not be allowed to make out a new case.

We have considered the respective submissions. In the peculiar facts and circumstances of the case, we are inclined to entertain the request made by the learned counsel, because no

tangible reason has been put forward by the Corporation for not proceeding against the borrower.

In the result, the appeal is dismissed as withdrawn. Leave is also granted to the appellant to withdraw Writ Petition No.17212 of 2006 with liberty to file fresh petition on the same cause.

If the appellant files fresh petition, then the same shall be decided by the learned Single Judge without being influenced by the observations contained in the order dated 20th September, 2006.

As a sequel to dismissal of the appeal as withdrawn, WAMP No.2121 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY,J

09-10-2006
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